

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)

* * * * *

CLAIMANT: USA (Department of Agriculture Forest
Service)

CASE 41K-0224-R-2023
41K 56648-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections. The above-captioned claim received an issue remark during the DNRC’s review of the claims.

The claim was consolidated into Case 41K-0224-R-2023 to resolve the issue remark.

FINDINGS OF FACT

1. Claim 41K 56648-00 received the following substantive issue remark:

AN AMENDMENT WAS SUBMITTED ON 08/12/2020 REQUESTING TO AMEND THE FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

2. On May 3, 2023, Claimant United States Department of Agriculture, Forest Service (“Forest Service”) filed a *Response* which reiterated that the previously filed amendment resolved the issue remark and brought the claim into historical conformity. The *Response* states that correction to the flow rate is necessary to correct a decimal error in the original filing. The *Response* included attachments of the amendment requesting the following modification to the claim:

8. **Flow Rate Claimed:** 5.0

- ☐ cubic feet per second
☒ gallons per minute
☐ miner's inches

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The proposed modification contained in the Forest Service's *Response* and previously filed *Motion to Amend* resolves the issue remark appearing on the claim. Based on the information contained in the Forest Service's *Response*, along with the information contained in the attached *Motion to Amend*, the claim should be modified as described in Finding of Fact No. 2. The modification resolves the issue remark, and the issue remark should be removed from the claim.

2. The requested amendment and modification do not have the reasonable potential to adversely affect other water rights as they are corrections to the abstracts which do not make any change to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

(Last Order)

USA (Department of Agriculture Forest Service)
Water Rights Program Manager,
Northern Region
26 Fort Missoula Rd
Missoula, MT 59804-7203

Service Via Electronic Mail:

**Mark J. Widerschein,
United States Department of
Justice
ENRD NRS
PO Box 7611
Washington, DC 20044-7611
202-532-5803
Mark.Widerschein@Usdoj.Gov
Montanabasins.ENRD@USDOJ.GOV**

Service List Updated: 7/14/2023

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41K PD\Cases\224\41K-0224-R-2023 MR 7.14.23 rc.docx

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 56648-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: JULY 13, 1955

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF SQUIRREL CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNW	15	19N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNW	15	19N	9W	LEWIS AND CLARK

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.